IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14573 of 2005
WITH
SPECIAL CIVIL APPLICATION NO. 13987 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI GANPATBHAI PATEL - Petitioner(s)
Versus
STATE OF GJARAT & 2 - Respondent(s)

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Appearance :
MRS KETTY A MEHTA for the Petitioner in both petitions.
Mr. H.D..Dave, Assistant GOVERNMENT PLEADER for Respondent no.1 in both petitions. ,
MR HS MUNSHAW for Respondent no.2 in both petitions.
MR PRASHANT G DESAI for Respondent no.3 in both petitions.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 18/01/2006

ORAL JUDGMENT

Rule. Learned advocate for the respective parties waive service of notice of Rule for the respective parties in both the petitions. At the request of the learned advocates for the concerned parties, both these petitions are taken up for their final hearing today.

2. In both the aforesaid petitions, an important issue has been raised for the adjudication by this Court to the effect that is it obligatory on the part of State Government to give, personal hearing to the petitioners while giving sanction, to revised draft development plan under clause (C) of sub-section(1) of section 17 of The Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as “the Act, 1976”) and that is it obligatory on the part of the State Government to supply copies of objections and suggestions (which are received by the Government) to the petitioner, before finalisation of revised draft development plan, under section 17(1)(c) of the Act, 1976 ?

3. Brief facts come upon surface, involved in the petitions and provisions of the Act, 1976, and the Rules

made thereunder, necessary, for adjudication, are as under:

> In the draft development plan sanctioned by the State, one of the lands in question was reserved for slum clearance. The said development plan was sanctioned by the State Government on 31st January, 1986. Every draft development plan required to be revised at least once in ten years as per section 21 of the Act, 1976, and therefore, the said plan requires revision in the year 1996. In the year 1996, both the lands involved in both the petitions were reserved for sewage treatment plant under section 12(2)(e) of the Act, 1976. As per section 13(1) of the Act of 1976, a notification was published inviting suggestions and objections. The petitioners filed their objections and suggestions, against reservation. Thereafter, upon considering suggestions and objections, (under section 14), the reservation was continued and the authority submitted the draft revised development plan, alongwith suggestions and objections, to the State Government as per section 16 of the Act of 1976. Thereafter, as per section 17 of the Act of 1976, the State Government considered suggestions and

objections and thought it fit as per proviso to section 17(1)(a)(ii), to publish a notification dated 17th May, 2001, whereby the State Government, instead of remanding draft development plan to Surat Urban Development Authority thought it fit to invite suggestions and objections for the proposed modification in the draft revised development plan for the Surat Urban Development Area. Thus, under the proviso to sub-section (ii) of clause (a) of sub-section (1) of section 17 of the Act of 1976, the first notification was published. In this notification, the land in question was proposed to be released from reservation and was proposed to be included in the residential zone. As per section 14 of the Act of 1976, when Area Development Authority (in the present case, it is Surat Urban Development Authority), invited suggestions and objections. The petitioners had filed their objections against imposition of reservation, but Surat Urban Development Authority thought it fit after considering those objections, not to modify the revised draft development plan or not to deserve the lands in question. Thus, Area Development Authority (SUDA), continued reservation upon lands in question for sewage treatment plant, (as per section 12(2)e)

of the Act of 1976), and, therefore, the draft revised development plan submitted, under section 16 of the Act of 1976, to the State Government, along with objections and suggestions received by Surat Urban Development Authority. These suggestions and objections include objections filed by the petitioners and therefore, the Government thought it fit under the proviso to clause (ii) of sub-clause (a) of sub-section (1) of section 17 of the Act of 1976, to invite further suggestions and objections as to proposed modification (for dereservation of the lands in question) in the revised draft development plan. It appears from the record of the case that Municipal Corporation of the city of Surat has raised objections against dereservation, by a separate resolution passed in the Board meeting, wherein several details are mentioned as to the dire need of land for sewage treatment plant and looking to the pressing need of the society and looking to the future development of the city and looking to the future population. They opposed, the proposed modification, published by the Government in the notification dated 17th May, 2001 (Annexure “D” to the memo of the petition) by filing their objections, under proviso to section 17(1)(a)(ii) of

the Act. It was pointed out by the Municipal Corporation of the city of Surat that such proposed modification as to dereservation of the land may not be finally sanctioned or approved by the State Government, meaning thereby that the proposed modification which was for lifting of reservation, (which was otherwise for construction of sewage treatment plant), was objected by Surat Municipal Corporation. After considering these suggestions and objections, as per section 17(1)(c) of the Act of 1976, the State Government, thought it fit, to sanction, the revised draft development plan, vide notification dated 2.9.2004. (Annexure “L” to the memo of the petition) without proposed modification. Thus, the Government thought it fit to drop the modification in the revised draft development plan which was initially thought or envisaged as per the proviso to clause (1) of sub-clause (a) of sub-section(1) of section 17 of the Act, 1976 vide its notification dated 17th May,2001. (Annexure “D” to the memo of the petition). This dropping of “proposed modification” has given birth to the present petitions. As per respondents, this “proposed modification” was never a conclusion of the State Government. It was to be finalised upon

receiving suggestions and objections. The Municipal Corporation of the city of Surat raised objections and insisted for reservation of the disputed land for sewage treatment and upon considering under section 17(1)(c) of the Act, all these suggestions and objections, (i.e. Which were filed by petitioners under section 14 and which were filed by Surat Municipal Corporation under proviso to section 17(1)(a)(ii) of the Act, 1976), the State Government thought it fit not to modify the revised draft development plan and published a notification dated 2nd September, 2004 (Annexure “L” to the memo of the petition), whereby the sanction has been given by the State Government to the revised draft development plan. This notification is under challenge in both these petitions, mainly on the contention that the State Government has not supplied copies of the objections and suggestions of the Municipal Corporation of the city of Surat, raised (under proviso to section 17(1)(a)(ii) of the Act of 1976), in pursuance of the notification issued by the State Government dated 17th May, 2001 and therefore, there is a breach of principles of natural justice and hence, the second notification dated 2nd September, 2004, whereby, the sanction has

been given to the revised draft development plan deserves to be quashed and set aside and also raised issue that no opportunity of personal hearing is given by the State Government before giving final sanction to the revised draft development plan. The effect upon the petitioners is that initially there was a reservation on the lands in question. Subsequently, the proposed modification was for lifting of the reservation was published and again upon considering objections and suggestions, the reservation was continued and the proposed modification was dropped by the State Government.

CERTAIN PROVISIONS OF THE ACT, 1976:

Sec.9 Development plan.

(1) As soon as may be after the constitution of an area development authority for any development area under section 5, [or designation of a local authority as the area development authority under sub-section (1) of section 6] the area development authority shall, not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time, extend, prepare and submit to the State Government a draft development plan for the whole or any part of the development area in accordance with the provisions of this Act.
(2) If a draft development plan is not prepared and submitted to the State Government by any area development authority within the period specified in sub-section (1) or within the period extended under that sub-section, an officer appointed by the State Government in this behalf may prepare and submit to the State Government in the prescribed manner a draft development plan and recover the cost thereof

from such area development authority out of its funds.

Sec.10 Copy of draft development plan to be open for public inspection.
A copy of the draft development plan as prepared under section 9 in respect of any area shall be kept open for inspection by the public during office hours at the head office of the area development authority, or as the case may be, at the office of the authorized officer.

Sec.12 Contents of draft development plan.
(1) A draft development shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out.
(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely :-
(a) proposals for designating the use of the land for residential, industrial commercial, agricultural and recreational purposes;
(b) proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, public assembly, museums, art galleries, religious buildings, play-grounds, stadium, open spaces, dairies and for such other purposes as may, from time to time, be specified by the State Government;
(c) proposals for designation of areas for zoological gardens, green belts, natural reserves and sanctuaries;
(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extensive and development;
(e) proposals for water supply, drainage, sewage disposal, other public utility amenities and services including supply of electricity and gas;
(f) reservation of land for community facilities and services;
(g) proposals for designation of sites for service industries, industrial estates and any

other industrial development on an extensive scale;
(h) preservation, conservation and development of areas of natural scenery and landscape;
(i) preservation of features, structures and places of historical, natural, architectural or scientific interest and of educational value;
(j) proposals for food control and prevention of river pollution;
(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force;
(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;
(m) provision for controlling and regulating the use and development of land within the development area, including imposition of conditions and restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of built up area allowed in specified area, the use and purposes to which a building or specified areas of land may or may not be appropriated, the sub-divisions of plots, the discontinuance of objectionable uses of land in any area in any specified periods, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoarding and other matters as may be considered necessary for carrying out the objects of this Act;
(n) provision for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land;
(o) such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf.

Sec.13 Publication of draft development plan.

(1) The area development authority or, as the case may be, the authorised officer shall, as soon as may

be, after a draft development plan is prepared and submitted to the State Government under section 9, publish it in the Official Gazette and in such other manner as may be prescribed along with a notice in the prescribed manner, inviting suggestions or objections from any person with respect to the development plan within a period of two months from the date of its publication.

(2) The following particulars shall be published alongwith the draft development plan, namely:-

(a) a statement indicating broadly the uses to which lands in the area covered by the plan are proposed to be put and any survey carried out for the preparation of the draft development plan;

(b) maps, charts and statements explaining the provisions of the draft development plan;

(c) the draft regulations for enforcing the provisions of the draft development plan;

(d) procedure explaining the manner in which permission for developing any land may be obtained from the area development authority or, as the case may be, the authorised officer.

(e) a statement of the stage of development by which it is proposed meet any obligation imposed on the area development authority by the draft development plan;

(f) an approximate estimate of the cost involved in acquisition of land reserved for public purposes.

Sec.14 Suggestions or objections to draft development plan to be considered.

If within the period specified in section 13 any person communicates in writing to the area development authority, or, as the case may be, to the authorised officer any suggestions or objections relating to the draft development plan, the said authority or officer shall consider such suggestions or objections and may modify such plan as it or he thinks fit.

Sec.15 Modifications made after publication of draft development plan.

When the modifications made by an area development authority or, as the case may be,

by the authorised officer in the draft development plan are of an extensive or of a substantial nature, the said authority or, as the case may be, the authorised officer shall publish the modifications in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice and thereupon, the provisions of section 14 shall apply in relation to such suggestions or objections.

Sec.16 Submission of draft development plan to the State Government for sanction.

(1) After a draft development plan is published as aforesaid and the objections or suggestions thereto, if any, are received, the area development authority or, as the case may be, the authorised officer shall, within a period of six months from the date of publication of the draft development plan under section 13, submit to the State Government for its sanction the draft development plan and the regulations with the modifications, if any, made thereto under section 14 or section 15:

Provided that the State Government may, on an application by the area development authority or the authorised officer, by order in writing, extend from time to time, the said period by such further period or periods as may be specified in the order, so however, that the period or periods so extended shall not, in any case, exceed twelve months in the aggregate.

(2) The particulars published under sub-section (2) of section 13, and the suggestions or objections received under section 14 or section 15, shall also be submitted to the State Government, alongwith the draft development plan.

Sec.17 Power of State Government to sanction draft development plan.

(1) (a) On receipt of the draft development plan under section 16, the State Government may, by notification,-

(i) sanction the draft development plan and the regulations so received within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modifications, or subject to such modifications, as it may consider proper;or

(ii) return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorised officer, for modifying the plan and regulations in such manner as it may direct:

Provided that, where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority or, as the case may be, the authorised officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice; or

(iii) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorised officer to prepare a fresh development plan under the provisions of this Act.

(b) Where a development plan and regulations are returned to an area development authority or, as the case may be, the authorised officer under sub-clause (ii) of clause (a), the area development authority, or, as the case may be, the authorised officer, shall carry out the modifications therein as directed by the State Government and then submit them as to modified to the State Government for sanction; and the State Government shall thereupon sanction them after satisfying itself that the modifications suggested have been duly carried out therein.

(c) Where the State Government has published the modifications considered necessary in a draft development plan as required under the proviso to sub-clause (ii) of clause (a), the State Government shall, before according sanction to the draft development plan and

regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the draft development plan and the regulations in such modified form as it may consider fit.

(d) The sanction accorded under [clause (a), clause (b) or clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under clause (d):

Provided that the date so specified shall not be earlier than one month from the date of publication of such notification.

(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorised officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) [or clause (o)] of sub-section (2) of section 12 and such land does not vest in the area in the development development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.

(3) A final development plan which has come into shall, subject to the provisions of this Act, be binding on the area authority concerned and on all other authorities situated in the area of the development plan.

(4) After the final development plan comes into force, the area development authority concerned may execute any work for developing, re-developing or improving any area within the area covered by the plan in accordance with the proposals contained in the development plan.

Sec.21 Revision of development plan.
At least once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of section 9 to 20, shall, so far as may be, apply to such revision.

GUJARAT TOWN PLANNING AND URBAN DEVELOPMENT RULES, 1979.

Rule 3 Manner of preparation of draft development plan and its submission to State Government by the officer appointed under section 9(2) -

The authorised officer shall prepare and submit the draft development plan after carrying out the survey of the area within the jurisdiction of the area development authority. For the purpose of carrying out survey of the area and preparation of the draft development plan the authorised officer shall after giving 24 hour's notice in writing to the owner, occupier or other person interested in the land unless such owner or occupier has given consent to such entry enter upon, survey, mark out such land and do all things necessary for such purposes and then proceed to prepare development plan in the manner provided in sections 10,11 and 12. After the development plan is prepared the said Officer shall submit the same to the State Government through the Chief Town Planner alongwith the particulars referred to in sub-section (2) of section 13.

Rule 6 Manner in which notice for inviting suggestions or objections to modifications in the draft development plan [and regulations] shall be published under section 15 or under the proviso to sub-clause (ii) of clause (a) of sub-section (1) of section 17. *- (1) If the modifications made by an area development*

authority or as the case may be by the authorised officer in the draft development plan are of an extensive or a substantial nature, the said authority or as the case may be the authorised officer shall publish the modification in the Official Gazette. These modifications shall also be published by a notice which shall, as for as may be, be in Form B in one or more Gujarati newspapers circulating in the area covered by the draft development plan. The notice shall announce that if any objections or suggestions in respect of these modifications are received from the public within two months from the date of publication of the modifications in the Official Gazette, they shall be considered by the area development authority or as the case may be by the authorised officer before finally submitting the development plan to Government for sanction.

(2) On receipt of the draft development plan under section 16, if the State Government is of the opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may publish the modifications so considered necessary in the Official Gazette. The State Government shall also, publish these modifications by notice in one or more newspapers in the regional language circulating in the area covered by, the draft development plan. The notice shall announce that if any suggestions or objections in respect of these modifications are received by Government from the public within two months from the date of publication of the modification in the Official Gazette, the State Government before according sanction to the draft development plan and the regulations, shall consider objections and suggestion so received.

4. The learned advocate for the petitioners mainly submitted that suggestions and objections invited by the State Government under the proviso to clause (ii) of sub-clause (a) of sub-section (1) of section 17 of the Act of

1976 have not been supplied to the petitioners. The proposed modification was already published by the State Government in the notification dated 17th May, 2001 and therefore, it was obligatory on the part of the State Government to supply copies of objections received by the State Government from the Municipal Corporation of the city of Surat before final sanction to the revised draft development plan. Thus, there is a breach of principles of natural justice and hence the notification publishing final sanction, dated 2nd September, 2001 (Annexure “L” to the memo of the petition) deserves to be quashed and set aside. The learned counsel for the petitioners has taken this Court to the fine nicety of facts whereby it was pointed out that in fact, there was no need, to provide a reservation, for sewage treatment plant, upon the land in question as per section 12(2)(e) of the Act of 1976. It is contended by the learned advocate for the petitioner that there must be a necessity for such reservation on the basis of facts. The necessity must exist in foreseeable future. Both these aspects are absent, looking to the facts of the present case and therefore, there was no need to impose reservation upon the land in question for sewage treatment plant as per section 12(2)(e) of the Act of 1976 and therefore also, the notification giving final sanction to the revised draft

development plan under section 17(1)(c) of the Act of 1976(Annexure “L”) deserves to be quashed and set aside and final sanction ought to be given with proposed modification as was published in the notification dated 17th May, 2001. (Annexure “D”).

5. The learned advocate for the petitioner has also vehemently submitted that the State Government has considered suggestions and objections of the Municipal Corporation of the city of Surat. Such objections were invited in pursuance of the notification dated 17th May, 2001 (Annexure “D” to the memo of the petition) against proposed modification in the revised draft development plant. The proposed modification as per the notification dated 17th May, 2001 was in favour of the petitioner i.e. lifting of the reservation of sewage treatment plant and converting the said land into residential zone. This proposed modification was objected by the Municipal Corporation of the city of Surat and the State Government was satisfied with the said objections and dropped the proposed modification in the revised draft development plan and gave final sanction as per section 17(1)(c) of the Act of 1976, meaning thereby that the reservation which was imposed on the land in question for sewage treatment plant by the Area Development Authority, is

sanctioned. Never ever before, copy of objections were supplied to the petitioner, neither by Municipal Corporation of the city of Surat nor by the State Government. Thus, there is a breach of principles of natural justice and more so by not giving an opportunity of being heard and therefore, final sanction given by the State Government vide notification dated 2nd September, 2004 as per section 17(1)(c) of the Act of 1976 (Annexure “L” to the memo of the petition) deserves to be quashed and set aside. The learned advocate for the petitioners has also relied upon the judgments delivered by the Hon'ble Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another vs. State of Karnataka and others reported in **AIR 1991 SC 1117** and the judgment delivered by this Court in **Special Civil Application No.12001 of 2004** dated 11th August, 2005, whereby it is pointed out that when any new material is presented, a copy must be supplied to the party, otherwise, the decision based upon new material tantamounts to breach of principles of natural justice.

6. I have also heard the learned Assistant Government Pleader Mr.H.D.Dave who has submitted that the draft development plan which was sanctioned in the year

1986 requires a revision at the end of every decade as per section 21 of the Act and therefore, the process as prescribed in the Act of 1976 right from section 9 onwards had been followed, observed and complied with by Surat Urban Development Authority as well as by the State Government. The objections were invited for revision in draft development plan by Area Development Authority under section 13 of the Act. The reservation was continued which was there in the development plan of 1986 for one land and for another land it was imposed vide notification under section 13 of the Act keeping in mind the necessity thereof. Against continuation of reservation, and against new reservation, the petitioners raised objections. It was thought it fit by the Surat Urban Development Authority not to modify the revised draft development plan and therefore, the draft revised development plan alongwith suggestions and objections (which were received by Surat Urban Development Authority) was sent to the Government for getting sanction as per section 16 of the Act of 1976, but the Government, instead of remanding or returning the draft development plan to the Area Development Authority (in the present case, Surat Urban Development Authority) thought it fit to issue a notification inviting objections and suggestions for the proposed modification

in the revised draft development plan as per the proviso to clause (ii) of sub-clause (a) of sub-section (1) of section 17 of the Act of 1976. The proposed modification was for lifting up of reservation. But this was never a final decision of the Government. This proposed modification was giving some hopes to the petitioners that instead of reservation, the land in question may be converted into residential zone. But Surat Municipal Corporation raised objections against this proposed dereservation. After taking into consideration all the suggestions and objections, of the petitioners (given under section 14) as well as of Surat Municipal Corporation [given under proviso to section 17(1)(a)(ii)] the State Government, dropped the proposed modification in the revised draft development plan and gave final sanction to the revised draft development plan without modification, as per section 17(1)(c) of the Act of 1976. This Court is not sitting in appeal against the decision taken by the Government whereby reservation has been imposed upon the land in question for sewage treatment plant. The State Government has considered objections and suggestions and has arrived at a conclusion to have or not to have the reservation upon the land in question. There is no procedural lapse and there is no breach of any of the provisions of the Act of 1976 nor is there any

breach of any rules of The Gujarat Town Planning and Urban Development Rules, 1979. It is also submitted by Mr. Dave that once there is no breach of provisions of the Act of 1976, and once there is no breach of the Rules of 1979, the policy decision taken by the Government in giving final sanction to the revised draft development plan, whether with or without any reservation upon a particular land, practically there is no scope for the judicial review much less under Article 226 of the Constitution of India. The learned Assistant Government Pleader vehemently submitted that there is no provision for giving personal hearing to the person who has raised objections nor there is any provision to supply copy of objections raised by one party to another party. It is for the State to take into consideration all the suggestions and objections and thereby to come to the conclusion whether the proposed modification should be incorporated in the revised draft development plan or it should not be incorporated in the revised draft development plan. The words used in section, especially in section 17(1)(c) are “take into consideration suggestions and objections that may have been received thereto and thereafter accord sanction to the draft development plan and regulations in such modified form as it may consider fit.” Thus, personal hearing is never

envisaged or contemplated by sub-clause (c) of sub-clause (1) of section 17 of the Act of 1976. Thus, objector is not required to be given, any personal hearing nor there is any provision as submitted by the learned Assistant Government Pleader which imposes a duty upon the State Government to supply a copy of objections received by one party to another party. This type of cross, exchange of objections, is uncalled for and unwarranted and never provided under the scheme of the Act. Looking to the scheme of the Act of 1976, there is no provision for internal exchange of objections and suggestions. There is no provision for giving any personal hearing to the objectors, otherwise, lots of objections (generally they are thousands in number) are generally being raised in one Development plan. Hearing of objections and cross exchanges of objections, if allowed by the Court -which is not allowed by the Act- will lead to several difficulties and perhaps draft development plan can never be sanctioned by the Government. Even it will be practically impossible for the first authority viz. Area Development Authority (here, it is Surat Urban Development Authority) to finalise, a revised draft development plan and to send it to Government for final sanction to revised draft development plan (under section 14 to be read with section 16 of the Act, 1976). If such

objectors are to be heard or if such objections are allowed to be cross-exchanged, the draft development plan cannot be finalised by the State Government for years together and therefore, the legislature has thought it fit to use words as stated herein above in section 17(1)(c) of the Act of 1976 and hence the objection raised by the petitioner that there is a breach of principles of natural justice is not true and therefore, it deserves not to be accepted.

7. I have also heard the learned counsel for the respondent no. 2, i.e. Area Development Authority, who has submitted that there is no procedural lapse in suggesting revision of development plan under section 16 of the Act, 1976. After following the due procedure, under the Rules, 1979, respondent no. 2 prepared draft revised development plan keeping in mind survey and study of the area to be developed and keeping in mind the need of the society and keeping in mind the future development. This draft of revised development plan was sent to State Government under section 9 on 28.2.1996. The notification was published under section 13 of the Act on 29.2.1996 and suggestions and objections were invited and it was not thought it fit by respondent no. 2 to propose any modification to the draft revised

development plan for lifting up of reservation under section 15 of the Act, 1976 and therefore, the revised draft development plan alongwith suggestions and objections were sent to the Government for according final sanction under section 16 of the Act, but the Government has opted for the proposed modification for the objections and suggestions were again invited under section 17 of the Act and ultimately, after considering all the suggestions and objections, the Government thought it fit not to modify as per the proposed modification and thus, reservation was continued upon the land in question. There is no procedural lapse, either by Area Development Authority (respondent no. 2) nor by the State Government (respondent no.3) in the preparation of revised draft development plan or in giving sanction to the revised draft development plan under sections 16 and 17 of the Act of 1976. There is no provision for giving any personal hearing to any objector nor is there any provision under the Act of 1976 to give a copy of the objections received from one objector to another objector. Such type of cross exchanges of objections and suggestions is never envisaged under section 17 of the Act. Even at a previous stage, i.e. Under section 14 of the Act of 1976 also, there is no such provision either to give personal or to allow exchange of objections and

suggestions. Section 14 of the Act is for considering of objections and suggestions by the Area Development Authority and section 17 is for the State Government to consider objections and suggestions. Neither under section 14 nor under section 17 [more particularly under section 17(1)(c)] of the Act, there is any duty vested in respondent no. 2 or in respondent no. 3, to give any opportunity of being heard or to allow exchanges of objections and therefore, once the Government takes into consideration all the suggestions and objections as per section 17(1)(c) of the Act of 1976, the Government can sanction revised draft development plan which is submitted by the Area Development Authority. In the facts of the present case, there is no procedural lapse. The imposition of the reservation and lifting of reservation is a policy matter under Town Planning Act. The Area Development Authority thought it fit to have reservation upon the disputed land for sewage treatment plant keeping in mind several factors including need and necessity. It was decided by the Surat Urban Development Authority vide resolution at Annexure “E” to the memo of the petition to have reservation upon the disputed land. The proposed modification dated 17th May, 2001 published by the Government (Annexure “D” to the memo of the petition) in so far as, it was within Surat Municipal Area, was also

objected by the Area Development Authority (in the present case, “SUDA”), as per clause (1) of the said note. (Annexure “E” to the memo of the petition). Thus, it was a decision of Surat Municipal Corporation as well as of Area Development Authority to request the State Government to drop the dereservation and to have reservation upon the land in question for sewage treatment plant and therefore, after taking into consideration the objections and suggestions, the Government dropped the proposed modification which the Government has suggested in its notification dated 17th May, 2001 (Annexure “D” to the memo of the petition) under the proviso to section 17(1)(a)(ii)of the Act of 1976. Thus, there is no legal right vested in the petitioner to get copies of objections and suggestions proposed by any other party and to get any personal hearing. What is not envisaged under the Act of 1976, cannot be expected to be followed or complied with neither by respondent no.1 nor by respondent no. 2. What is envisaged under the Act has already been complied with both as per section 13 read with section 14 and as per section 17 of the Act of 1976 by the Area Development Authority as well as by the State respectively and hence the petitions may not be entertained by this Court. On the contrary, personal hearing is implied ousted, as per

section 14 and section 17 of the Act, 1976.

8. I have also heard the learned advocate Mr. Prashant Desai for the respondent no. 3 Municipal Corporation of the city of Surat who has mainly submitted that there is no breach of any of the sections of the Act of 1976 nor there is any breach of Rules of 1979 in finalising revised draft development plan (at the hand of Area Development Authority) or in giving final sanction to the revised draft development plan under section 17(1)(c) of the Act of 1976 by the State Government. There is no provision under the whole Act to give any personal hearing to the objectors nor is there any provision to give copy of objections by one objector to another objector. Looking to the facts of the present case, the Area Development Authority (In the present case, SUDA), has published a notification under section 13 of the Act of 1976 because earlier draft development plan was given sanction in the year 1976 and therefore, at the end of every 10 years, the development plan requires to be revised (as per section 21 of the Act, 1976) and therefore, the procedure as envisaged from section 9 onwards ought to be followed afresh for any revision in the draft development plan. After considering the need of the society, the notification was published in the

official gazette under section 13, objections were invited. Reservation was objected by the petitioner upon disputed land. Considering objections, the Area Development Authority (SUDA) thought it fit not to modify the revised draft development plan and therefore, under section 16 of the Act, of 1976, SUDA sent the revised the draft development plan to the State Government for final sanction alongwith suggestions and objections received in pursuance of the notification under section 13 of the Act. The Government had four options either to sanction the draft development plan or to refuse to sanction the draft development or to return draft development plan to SUDA or to propose itself the modification in the revised draft development plan. In this case, the Government opted for the fourth option. The modification was running in the mind of the State Government and therefore, the proposed modification in the revised draft development plan was published and objections were invited by the State Government. Such proposed modification was never a final one. Such proposed modification is always a proposed one. The Municipal Corporation of the city of Surat raised objections against the proposed modification and insisted for continuation of the reservation upon disputed land for the sewage treatment plant looking to the need of the society, future population and the need

for the disposal of the sewage. The Government took into consideration all the objections and as per section 17(1)(c) of the Act of 1976, and thought it fit to drop the proposed modification and thus, the disputed land continued in reservation for sewage treatment plant [as per section 12(2)(e) of the Act.] Thus, the procedure as envisaged from section 13 onwards has been scrupulously followed by respondent no.1 as well as by respondent no. 2. There is no breach of any of the provisions of the Act of 1976. There is no provision under the Act of 1976, much less under section 14 or 17(1)(C) of the Act of 1976 to give any personal hearing to the objectors. Nor is there any provision to give copy of the objections received by the State Government to any other party. Such type of exchanges of objections and suggestions have never been envisaged under section 17 of the Act of 1976. The Government has to invite objections and suggestions and “it has to take into consideration those objections.” Once suggestions and objections have been taken into consideration either for modification of the draft development plan or for dropping of the modification in the draft development plan, there is no need to give any personal hearing. In the facts of the present case, the Government has dropped modification as suggested in the earlier modification dated 17th May, 2001 (Annexure “D” to

the memo of petition). Final notification has been published on 2nd September, 2004 (Annexure “L” to the memo of the petition), whereby the proposed modification has been dropped. Thus, there is no breach of any of the provisions of the Act nor of the Rules, 1979. The learned counsel for the respondent no. 3 has also relied upon the following decisions.

(01) AIR 1968, SC, 303.

(02) AIR 1967, SC, 1373

(03) 1988(1) GLR, 569

(04) 1995(2) GLR, 1832

(05) AIR 1970, SC, 1265

(06) AIR 1990 SC, 2023

(07) AIR 1971 SC, 40

(08) AIR 1987 SC, 1802

(09) AIR 1986, SC, 180

(10) AIR 1997 SC, 152

and has pointed out that whenever any decision is to be taken against the whole mass, there is no need to give any personal hearing. It is also pointed out that as the ratio from the aforesaid judgments that when there is no provision under any Act to give any personal hearing, it cannot be claimed as a matter of right nor it can be thrust upon as a duty to be

performed. When the statute is either directly or by implication, ousts the process of hearing, it can never be read into. It is also submitted by the learned advocate for the respondent no. 3 that this Court is not sitting in an appeal against the the decision taken (initially by Area Development Authority and finally) by the Government as to imposition of the reservation and therefore, this Court may not go into the question of need of reservation. The Government has considered all the objections and suggestions, of the petitioners for dereservation and of Surat Municipal Corporation for reservation and thereafter, the proposed modification was dropped, consequently, the proposed lifting of the reservation was dropped. There is no need for the Government to pass a speaking order either for lifting of the reservation or for imposing reservation. If there is duty to pass speaking order for reservation or dereservation of land, then only justification of reasoning can be challenged, otherwise “need of reservation” is not justiciable. Once this Court comes to a conclusion as to the fact that there is no procedure lapse in the revised draft development plan and the sanction thereof, either by Area Development Authority or by

the State under section 14 or under section 17(1)(c) of the Act of 1976, respectively, then this Court may not interfere in the final sanction of the revised draft development plan under section 17(1)(c) of the Act of 1976 which is published by way of notification dated 2nd September, 2004. (Annexure “L” to the memo of the petition) and therefore, the petition may not be entertained by this Court in exercise of the powers under Article 226 of the Constitution of India.

9. Having heard the learned counsels for the rival parties and looking to the facts and circumstances of the case, I am of the opinion that the notification dated 2nd September, 2004 issued by the State Government is true, correct, legal and in consonance with the provisions of Gujarat Town Planning and Urban Development Act, 1976 for the following facts and reasons:

(i) The development plan which was sanctioned in the year 1986 requires to be revised at least once in 10 years and therefore, the said plan was taken into revision by the Area Development Authority (Surat Urban Development Authority) and looking to the provisions of the Act of 1976,

especially section 12 of the Act of 1976, the notification was issued under section 13 of the Act of 1976, whereby suggestions and objections were invited against the revised draft development plan. The reservation was imposed by the Area Development Authority for the land in question for sewage treatment plant. (as per section 12(2)(e) of the Act). The petitioners raised objections against reservation. These objections and suggestions were taken into consideration by the Area Development Authority under section 14 of the Act of 1976 and the revised draft development plan was sent to the Government alongwith suggestions and objections received by the Area Development Authority under section 16 of the Act of 1976, for getting final sanction from the State Government. From the facts of the case, it is clear that the State Government proposed modification in the revised draft development plan for lifting up of reservation or for dereservation of the land in question and therefore, as per the proviso to clause (ii) of sub-clause (a) of sub-section (1) of section 17 of the Act of 1976, the notification was required to be published, inviting suggestions and objections, for the modification of the revised draft development

plan. This notification was issued by the State Government on 17th May, 2001 (Annexure “D” to the memo of the petition). Suggestions and objections were received including from the Municipal Corporation of the city of Surat by the State Government. The respondent no. 3 Municipal Corporation of the city of Surat insisted for continuation of the reservation as per the revised draft development plan suggested by the Area Development Authority (SUDA). The justification and necessity has also been pointed as per the resolution passed by the Municipal Corporation of the city of Ahmedabad. Keeping in mind these suggestions and objections and after taking into consideration all the objections and suggestions, the Government, dropped the proposed modification and finally, gave sanction under section 17(1)(c) of the Act of 1976 and the reservation in the disputed land was continued. Under the provisions of the Act of 1976, there is no obligation on the part of either Area Development Authority (under section 14 of the Act,1976) or on the part of the State Government (under section 17 of the Act,1976) to give any personal hearing to the objectors nor is there any provision for cross exchanges of

objections and suggestions between the persons who are in favour of modification and who are opposing modification. The suggestions and objections received by the Government or by the Area Development Authority (SUDA) are not required to be given from one party to another party. There is no obligation to further invite detailed objections from anybody and therefore also exchange of objections, inter se, between objectors is not envisaged neither under section 14 nor under section 17 of the Act,1976.

(ii) Looking to the sections of the Act of 1976, the draft development plan must contain, broadly, the subjects which are referred to in section 12 of the Act of 1976. In view of the provisions of section 12(2)(e) of the Act of 1976, the draft development plan shall provide a proposal for water supply, drainage, sewage disposal and other public utility services. The Area Development Authority, looking to the proposed development of the area, imposed reservation on the disputed land for the sewage disposal plant for which objections and suggestions were invited, after publishing revised draft development plan under section 13, of

the Act of 1976. As per section 14 of the Act, the Area Development Authority shall have to consider the objections and suggestions. The words used under section 14 of the Act are ".... the said authority or officer shall consider such suggestions or objections" meaning thereby the suggestions and objections invited are required to be considered by the Area Development Authority and thereafter, if any modification is required, further procedure under section 15 has to be followed by the Area Development Authority. Looking to the facts of the present case, no modification was found necessary for lifting up of reservation, by the Area Development Authority and therefore, after following the procedure under section 14 of the Act of 1976, the revised draft development plan was sent to the State Government for its sanction under section 16 of the Act, alongwith suggestions nd objections received by the Area Development Authority. If we go ahead in the scheme of the Act of 1976, four ways are open for the State Government under section 17 of the Act either

(a) to sanction the revised development plan;(or revised draft development

plan, as the case may be); or

(b) to refuse to accord sanction and direct area development authority to prepare a fresh development plan, (or revised draft development plan, as the case may be); or

(c) to return the revised development plan to the Area Development Authority for modification; or

(d) if the Government is of the opinion that substantial modification in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the Area Development Authority, publish a modification in the official gazette indicating proposed modification and invite objections and suggestions.

Thus, in the facts of the present case, the fourth option was opted by the Government. Looking

to the suggestions and objections of the petitioner, (which they had filed under section 14 of the Act and which were received by the State Government under section 16 alongwith revised draft development plan), the State Government thought it fit to issue a notification dated 17th May, 2001 (Annexure “D”) for inviting suggestions and objections against the proposed modification in the revised development plan. After this publication of the notification, the State Government received objections and suggestions including from Surat Municipal Corporation. Surat Municipal Corporation raised objections against proposed modification i.e. against dereservation of land in question. It was pointed out in detail the need for reservation of the land in question, for sewage treatment plant. Even Area Development Authority (SUDA) was also informed as to these objections and therefore, Area Development Authority has also resolved (vide Annexure “E” to the memo of the petition) that reservation as suggested by Surat Municipal Corporation should be imposed or continued by the State Government as per note no.1 of that resolution (Annexure “E”) After taking into consideration of the objections and suggestions, the State Government

has all power looking to the scheme of the Act of 1976, especially under section 17 of the Act of 1976, either to accord sanction to the draft development plan as submitted by the Area Development Authority, under section 16 of the Act or to accord sanction as per the proposed modification suggested by the State itself under the proviso to section 17(1)(a)(ii) of the Act, of 1976. It is not obligatory on the part of the State Government either to hear personally the objectors or to give copies of objections received from one party to another party and thereafter only, final sanction can be given. There is no such requirement under the Act,1976 much less under section 17(1)(c) thereof. What is envisaged under the provisions of the Act of 1976, especially under section 17(1)(c) of the Act is “to take into consideration the suggestions and objections that might have been received thereto and thereafter, accord sanction to the draft development plan and regulations in such modified form as it may consider fit.”, meaning thereby that the Government has to take into consideration suggestions and objections. This is enough. There is no further obligation upon the State Government under the Act. Neither personal

hearing is envisaged nor exchange of objections from one party to another party has been envisaged.

(iii) Looking to the scheme of the Act of 1976, the Area Development Authority has to prepare a draft development plan, keeping in mind the provisions of section 12. Thereafter, draft development plan (or revised draft development plan, as the case may be) ought to be published under section 13. Objections and suggestions ought to be invited. First filter applied under the Act, 1976, is of Area Development Authority. If the Area Development Authority is of the opinion that there is no need of any modification, after taking into consideration suggestions and objections, the Area Development Authority, has to send the development plan under section 16 to the State Government alongwith suggestions and objections. But if the Area Development Authority is of the opinion that substantial modification is required, then as per section 15 of the Act, again suggestions and objections ought to be invited and thereafter, plan should be sent to the State Government under section 16 of the Act of 1976. If no modification is envisaged or contemplated by the Area Development

Authority, again the State Government has power under section 17 of the Act of 1976 to apply mind again on objections and suggestions received by the Area Development Authority under section 14 of the Act of 1976. This is a second filtration. Thus, under section 17 of the Act of 1976, the same objections, will be looked into, again by the State Government and the State Government can either return the development plan for modification or by itself, suggest modification in the draft development plan, if they are substantial in nature and the State itself can invite objections and suggestions and after considering objections and suggestions under proviso of section 17(1)(a)(ii) of the Act, 1976. Now, the Government has to give sanction with such modified form as it may consider fit after taking into consideration the objections and suggestions. Looking to this scheme of the Act of 1976, and looking to the facts of the present case, especially when the Area Development Authority (in the present case, it is Surat Urban Development Authority) and the State Government have followed the procedure as per sections 13, 14, 16 and 17 of the Act of 1976, I am of the opinion that the sanction given by the State Government to the

revised draft development plan dated 2nd September, 2004 (at Annexure “L” to the memo of the petition), is true, correct and in consonance with the provisions of the Act of 1976 and the Rules of 1979.

(iv) It is vehemently submitted by the learned advocate for the petitioners that there is no necessity for the Area Development Authority to impose any reservation upon the land in question and that the necessity must be based upon objective facts and necessity must be in existence in foreseeable future. In justification of this argument, it is contended by the learned advocate for the petitioners that the respondent Corporation has already constructed sewage treatment plant in the area admeasuring approximately 1 lac sq.yds. of land. The learned counsel for the petitioners has also taken this Court to the fine nicety of the measurements of the area and pointed out that out of total reservation, initially of 4,79,490 sq.mtrs. of land, 1,50,000 sq.mtrs. of land has already been acquired by the respondent no. 3 Surat Municipal Corporation, out of which, in 1 lac sq.mtrs. of land, sewage treatment plant has already been constructed and the area of 5000 sq.mtrs. Of land

has been given to Surat Electricity Co. Ltd. Thus, enough land is available with the Municipal Corporation of the city of Surat. The learned counsel for the petitioners has also taken this Court to the affidavit-in-reply filed by the State Government as well as by the Corporation and pointed out that there is no necessity or justification for having reservation upon the land in question. This contention of petitioner is not accepted by this Court. The decision or evaluation of existence of “need” or “necessity” for reservation of the disputed land, is a subjective satisfaction of the town planning authority and of the State Government. Looking to the facts of the case, there is a base for or there exists basic facts for imposing reservation upon impugned land. The contention of the petitioner that facts on record are not sufficient to arrive at the conclusion to the need/necessity for having reservation upon impugned land, is not accepted by this Court. The Court need not evaluate the facts (need for reservation-objections by Surat Municipal Corporation) on one hand and satisfaction (for imposing reservation) on another hand. Suffice it will be, if the objections are considered prior to decision, by the State

Government, for not to modify the revised draft development plan under section 17(1)(c) of the Act,1976. The learned counsel for the Municipal Corporation of city of Surat has also pointed out that there is enough material on record of the case that there is a dire need for the Municipal Corporation of the city of Surat to have the land in question for sewage treatment plant, looking to the pressing need of the society as on today and for future expansion and also keeping in mind the future population of the city. It is the State Government who has to further reconsider, while giving final sanction, as to the need of the society and as to the subject matters which are referred to in section 12(2) of the Act of 1976. Several are the matters/subjects, which are referred in section 12 of the Act of 1976 which ought to be reflected in the draft development plan, like proposal for reservation of the land for the public purpose, such as schools, colleges, educational institutions, medical and public health institutions, social welfare and cultural institutions, proposal for zoological gardens, green belt, transportation and communication, such as roads, highways, parkways, railway stations, waterways, proposal for water

supply, drainage, sewage disposal and other public utilities, amenities and services including supply of electricity and gas, and various other such types of subjects. It is the function of the Area Development Authority to keep in mind future development of the area and to prepare draft development plan. The public at large can raise objections and suggestions under section 13 to be read with section 14 of the Act of 1976. If they are brushed aside by the Area Development Authority under section 14 of the Act of 1976, then the Government can consider these objections and suggestions, keeping in mind the need of the society and the proposed development, as per provisions in section 16 to be read with section 17 of the Act,1976. It is the Government who has to finally give sanction to the draft development plan. Once the State Government gives final sanction to the draft development plan, I see no reason to interfere with the final sanction of the draft development plan in exercise of the powers under Article 226 of the Constitution of India especially, when procedure is followed as per the scheme of the Act, 1976, i.e. objections are invited and when they are considered. The justification or reasons, for the existence of,

need for reservation, is not necessary to be given by the Government, separately while sanctioning, draft development plan under section 17(1)(c) of the Act of 1976. Reservation of land for the purposes referred in section 12(2)(e) is kept outside the purview of section 17(2) and section 20 of the Act, 1976. Thus, capacity to acquire the land in question is not to be evaluated, but what is to be evaluated is the need of the society or necessity of reservation. Once the procedure as envisaged under the Act from section 13 to section 17 of the Act of 1976 is complied with, this Court will not go in search of further justification of the reservation of the land in question for the purposes referred to in section 12 of the Act of 1976. This Court is not sitting in appeal against the decision of the Government. Thus, looking to the provisions of the Act of 1976, there is no need for the Government to give separate decision for reservation nor is there any need, to pass any speaking order for it, by the Government nor this Court is sitting in appeal against the decision taken by the Government in the sanctioning of the draft revised development plan. Judicial review of the decision of reservation for the land under section 12(2)(e) of the Act, 1976 is

not warranted looking to the facts of the present case. In fact, the development of the area has to be carried out by the authority, especially constituted under the Act of 1976. They have to consider several matters or subjects as suggested under section 12 of the Act of 1976 and once they consider it properly as per procedure of the Act,1976, it is not warranted for this Court to go behind reasons for the draft development plan or behind reasons for giving sanction to the draft development plan [by the State under section 17(1)(c) of the Act, 1976.) Where should be the parks, where should be school, where should be residential area and where should be public utility services and amenities, like water supply, drainage, sewage etc. is left at the wisdom of the expert body constituted under the Act,1976, viz Area Development Authority and to the final sanction giving authority viz. State Government. Seeking too much justification will frustrate the provisions of the Act of 1976. Mathematical nicety and statistical accuracy is not required to be seen by this Court. This Court is of the opinion that there is no procedural lapse in drafting the revised draft development plan by the Area Development Authority, nor there is any procedural lapse in

giving sanction to the revised draft development plan by the State Government under section 17(1)(c) of the Act and therefore, it is not necessary for this Court to evaluate the need or necessity for reservation for sewage treatment plan upon the land in question which the Area Development Authority has fixed under section 12(2)(e) of the Act of 1976.

(v) It is also vehemently submitted by the learned advocate for the petitioners that upon suggestions and objections of the petitioners (which the petitioners had supplied to the Area Development Authority under section 14 of the Act of 1976), the Government had thought it fit that substantial modification is required in revised draft development plan and therefore, a notification narrating proposed modification, was also issued dated 17th May, 2001 and suggestions and objections were invited. In pursuance of this notification, when the Municipal Corporation of the city of Surat is raising objections and when the proposed modification is dropped by the State Government, while giving final sanction under section 17(1)(c) of the Act of 1976, the petitioners ought to have been supplied copies of such suggestions of the

Municipal Corporation of the city of Surat and petitioners must be heard. This attractive contention, if looked into closely, through the sections of the Act of 196, is not helpful to the petitioners. The Act of 1976 has never envisaged exchange of objections and suggestions. The Act,1976 never envisaged any opportunity of personal hearing to be given to any objector. The Act of 1976 never envisaged to pass any speaking order upon objections (so that its justification can be challenged before the Court). The Act never envisaged that after exchange of objections, further objections are to be accepted. Neither of these is present in the Act, looking to the provisions of section 17(1)(c) of the Act, (even this is not envisaged under section 14 of the Act, when objections are to be considered by the Area Development Authority.) The only duty, cast on the State Government, under section 17 (and upon Area Development Authority under section 14 of the Act, 1976)is, to consider objections and suggestions. Personal hearing to the objectors, is never contemplated, looking to the provisions of the Act of 1976.

(vi) It has been held by this Court in para-9 of

the judgment in the case of ***Kikabhai Ukabhai Patel & Ors. V/s. State of Gujarat & Ors.*** **reported in *1988(1) GLR 569*** as under:

> *9. So far as second contention is concerned, it must be stated that nowhere in the Act, it has been prescribed to give any personal hearing to an objector. At the stage of publication of the draft development plan and even at the stage of publication of substantial modification, suo motu proposed by the State Government, while being called upon to sanction the development plan, members of the public have been given an opportunity to object. Once their objections are received, they are required to be considered by the concerned authority but there remains no question of giving any personal hearing to such objectors. This is contraindicated by the scheme of the Act and it also stands to reason. There can be hundreds of such objections. If personal hearing is to be given to all such objectors, sanctioning of the plan can never be completed for decades and thus the very prescription of time limit provided by the rule making authority would be rendered nugatory. It is not in dispute that the petitioners were given ample opportunity to file their written objections to be proposed development plan and their objections were considered by the authority. Consequently, the second contention has also to be rejected.*
>
> *(emphasis supplied)*

Thus, from the aforesaid judgment, it is clear that once objections are invited and considered, there is no need of giving personal hearing to such objectors. "Personal hearing" looking to the provisions of section 17(1)(c) of the Act and also under the provisions of section 14 of the Act, is impliedly ousted. Therefore, it has been observed in the aforesaid paragraph that it is contra-indicated

by the scheme of the Act and it also stands to reason that there can be hundreds of such objections if personal hearing is to be given to such objectors and process of sanctioning of plan can never be completed for decades and the very description of the time limit provided by the rule making authority would be rendered nugatory. In the facts of the present case also, enough opportunities were given to the petitioners to raise their objections and suggestions. Objections and suggestions were given by the petitioners once under section 14 of the Act of 1979. Similarly objections and suggestions were given by the Municipal Corporation of the city of Surat under section 17 of the Act of 1979 and the State Government has considered all these objections and suggestions under section 17(1)(c) of the Act and has given final sanction to the draft development plan, whereby the proposed modification in revised draft development plan, has been dropped by the State Government. Merely because the State Government has published the proposed modification as per proviso to section 17(1)(a)(ii) of the Act of 1976, it gives no additional right to the petitioners to receive objections and suggestions, given by the objectors in pursuance of that

notification under section 17 of the Act of 1976. Merely because the proposed modification has been suggested by the Government, no additional right is vested in the petitioners, neither of personal hearing nor of getting copies of objections and suggestions given by other persons. Looking to the scheme of the Act and looking to the aforesaid judgment of this Court, no personal hearing is envisaged and the objections filed by one party are not required to be given to other party even when the proposed modification is published either under section 15 of the Act,1976 or under the proviso to section 17(1)(a)(ii) of the Act of 1976. The modifications are possible at two different stages. One at the hand of the Area Development Authority under section 15 of the Act and another at the hand of the State Government under the proviso to section 17(1)(a)(ii) of the Act. In both these eventualities, further objections and suggestions ought to be invited. But that gives no separate or additional right to any of the persons of hearing or of getting copies of suggestions and objections, (filed by others) when any modification is accepted, by the Area Development Authority or when the proposed modification is dropped, by the Area

Development Authority or when the proposed modification is accepted by the State Government or when the proposed modification is dropped by the State Government.

(vii) In has been held by the Hon'ble Supreme Court in the case of **Union of India V/s. J.N.Sinha** reported in **AIR 1971 SC 40**, especially in para-7 thereof as under:

> *"7. Fundamental Rule 56 (j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Art. 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak v. Union of India, AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or*

> *by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature on the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."*
>
> *(emphasis supplied)*

Thus, it is held by the Hon'ble Apex Court that if statutory provisions either specifically or by necessary implication, exclude the application of any or all the rules of principles of natural justice, then the Court cannot ignore the mandate of legislature or of the statutory provisions and cannot read them into concerned provisions. Looking to the provisions of the Act of 1976, it is the duty of the Area Development Authority under section 14 and it is the duty of the State Government under section 17 of the Act,1976 to consider suggestions and objections. To take into consideration suggestions and objections, cannot be equated with personal hearing. What is indicated by sections under the Act of 1976 is to invite suggestions and objections and against draft development plan and

for the planning which is done by the Area Development Authority, keeping in mind section 12 of the Act and thereafter, the Area Development Authority and the State Government has to take into consideration objections and suggestions under sections 14 and 17 of the Act, 1976. As held by the Division Bench of this Court, if personal hearing is to be read into these provisions, it will tantamount to violations of the provisions of the Act, 1976, which is contra-indicated by the scheme of the Act and as per the judgment delivered by the Division Bench of this Court, as per **1988(1) GLR, 569 (para 9 thereof).** Once, objections are invited and considered by the Government or by the Area Development Authority, there is no need for personal hearing and hence there is no violation of principles of natural justice, looking to the facts of the present case. As per the provisions of section 14 and section 17, personal hearing is impliedly ousted.

(viii) The learned advocate for the respondent no. 3 Municipal Corporation of the city of Surat has also placed reliance on various judgments as stated herein above, whereby it has been pointed out that when, a decision is taken, for

the whole mass, then personal hearing is not necessary to any individual. The learned counsel for the respondent no. 3 has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India and another V/s. Cynamide India Lts. & Anr.** reported in **AIR 1987 SC 1802**, and in the case of **The Bihar School Examination Board V/s. Subhas Chandra Sinha and others** reported **AIR 1970 SC 1269** which are pertaining to fixation of price and cancellation of examination and has pointed out that in such a situation, personal hearing is not required to be given. In the facts of the present case, the town planning is not for an individual but it is for the public at large. The scheme of the Act is such that adequate opportunities have been given to file objections and suggestions and therefore, personal hearing or exchange of objections (even after publication of the proposed modification in the notification) is not required. The argument canvassed by the learned advocate for the respondent no. 3 is accepted by this Court looking to the provisions of the Act. While giving final shape to the development plan, personal hearing is not required to be given. It is sufficient compliance if objections are invited and they are considered. It

is also not obligatory on the part of the State Government to give suggestions and objections received from one party to another party.

(ix) The learned counsel for the petitioners has also cited authorities as stated herein above. But looking to the facts of the present case, these judgments are not helpful to the petitioner. The facts of the present case are different especially when they are match with the provisions of section 14 of the Act and the provisions of section 17(1)(c) of the Act of 1976 which are for consideration of objections in the hands of Area Development Authority and in the hands of the State Government, respectively. When by necessary implication, personal hearing is ousted, it cannot be read into by the Court. The Court cannot recast and re-frame the structure of the provisions of the Act. It has been held by the Hon'ble Supreme Court in the case of **Union of India v. Deoki Nandan Aggarwal** reported in **AIR 1992 SC 96** in para-14 as under:

> *"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not*

been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities." *(para 14)*
(emphasis supplied)

Looking to section 14 or section 17 of the Act, 1976, the Area Development Authority or State Government has to consider the objections and suggestions before sending draft development plan to Government or before giving final sanction to draft development plan (or to revised draft development plan, as the case may be).

(x) It is also contended by the learned advocate for the petitioners that the reservation for much longer period affects the petitioners' right of property if there is a need of sewage treatment plant in the year 2021. In the affidavit-in-reply of the respondent no. 3 as well as of the State, there is no present need or necessity for the imposition of the reservation upon the land in

question, especially under section 12(2)(e) of the Act,1976. This contention is also not accepted by this Court for the reason that every development plan remains in force generally for 10 years as per section 21 of the Act,1976 and thereafter as per the provisions of the Act, it should be revised by the Area Development Authority. The need of reservation can be continued looking to the facts of the case. In the facts of the present case, in special civil application no. 13987 of 2005, the reservation was there from 1986 and therefore, if it is extended even after 1996, for a further period of 10 years, then it debars the petitioner from the sale or development of the said property. This attractive contention is legally not sound and is incorrect. The reservation as per the provisions of the Act of 1976, for any particular land is envisaged under section 12 of the Act, keeping in mind the need of the society and the future development. The Act, 1976 is pertaining to Town planning. Every planning presupposes the need in future. Always therefore, reservation, as per section 12(2)(e), should be made keeping in mind the need or necessity of society in future. Town planners must have a good foresight. But this subjective satisfaction,

of Town Planning Authority as well as of State Government, must follow the procedure established by law. If the Area Development Authority decided that the sewage treatment plant is necessary on the particular land, it has to invite objections (under section 13) and thereafter it has to consider the objections (under section 14). If area Development Authority thinks, that substantial modification, is required again objections are required to be invited (under section 15). In the facts of the present case, Area Development Authority has not proposed any modification so far as reservation of the land is concerned. Now, State Government will receive revised Draft Development Plan with suggestions and objections (under section 16). At this stage, Government -

(a) has power to sanction the draft development plan (or revised draft development as the case may be); or

(b) has power to refuse to sanction the draft development plan (or revised draft development plan) and to direct the Area Development Authority to prepare, a fresh, draft development plan); or

(c) has power to return, the draft

development plan (or revised draft development plan) to the Area Development Authority for modification; or

(d) has power to sanction the draft development plan with modification. But, if the modifications are substantial in nature, before modification, State Government, has to publish a notification of proposed modification, thereafter has to invite objections and suggestions (under section 17(1)(a)(ii)-proviso) and thereafter has to consider all those objections and suggestions [under section 17(1)(c)] and thereafter can sanction the draft development plan (which is popularly known as final development plan or final revised development plan), in such modified form as it may consider fit. Thus words used in section 17(1)(c) of the Act,1976 viz - "... in such modified form as it may consider fit" includes the power to drop the proposed modification (which is published under section 17(1)(a)(ii)-proviso). Before such dropping of proposed modification there is no duty of the State to give personal hearing to the objectors (who has raised objection under section 14 of the Act)

nor there is any duty vested in State and suggestions of one party to another party. Thus for imposing reservation on a particular land, once the aforesaid procedure, is followed, the Court, cannot sit in appeal against the decision taken initially by Area Development Authority and then State Government. In the facts of the present case, there is no procedural lapse. It is a decision of the Area Development Authority and it is finally a decision of the Government, where to have a sewage treatment plant or as stated herein above, where to have a park, garden, college etc. It is for the Authority to satisfy the need of the society and of the area to be developed. Where such amenities are required by the society, whether in east or west, or north or south, it has to be decided by the Authority and then by the Government. The future development of the society and the area has to be looked into by the Area Development Authority and the State Government and therefore, the the contention of the petitioner that there is no necessity for continuation of the reservation is not accepted by this Court,

especially when before imposition of the reservation and before revising the draft development plan, adequate opportunities of raising suggestions and objections were given by the Area Development Authority and by the State Government. 10 years' period or 20 years' period is not, too long, a period to keep in mind for the future development. Once, one type of development is allowed, it is extremely difficult subsequently to change such development. If colleges or residential units are allowed to be constructed on the land upon which sewage treatment plant is necessary today, it cannot be removed in future, when there will be actual need for sewage treatment plant. It is the duty vested in the Area Development Authority and it is the duty vested in the State Government to envisage all the future need of the society and of proper and systematic development of the area. All the necessary provisions ought to be made in advance for the subjects referred to in section 12 of the Act so that whenever actual development is to be carried out either for constructing schools, colleges, gardens,

medical and public health institutions, markets, places for public entertainment or construction for water supply, drainage or sewage treatment plant etc., it may not lead to a situation that no such development can ever be carried out. Therefore, the contention raised by the learned counsel for the petitioners that there is no need for reservation of the land in question for construction of sewage treatment plant is not accepted by this Court. The need is based on subjective satisfaction of town planning authority. Once these objections and suggestions are considered, the authority or State Government can finalise the development plan. Thus “need” for reservation, more particularly, as per section 12 (2)(e) of the Act, 1976, upon any land is not revisable by the Court or is not justiciable by the Court, especially when procedure to impose reservation is scrupulously followed. Such “need” for reservation is not required to be expressly mentioned by separate speaking order by Government while sanctioning draft development plan (or revised draft development plan) so

that it can be challenged subsequently in the Court. When Government sanctions, the draft development plan under section 17 of the Act of 1976, whether with reservation or without reservation, this Court will not further evaluate the “need” for reservation or dereservation and will not further look, one by one, to all the suggestions and objections. In town planning, matter, especially of reservation, this Court will look only to the fact that whether procedure to impose reservation has been followed or not. Once this decision making process is found correct, the decision of the Government in town planning matter, especially reservation of land for the purposes referred to in section 12(2)(e) of the Act, 1976, generally will not be upset by the Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India of India. Clause 12(2)(e) is wisely kept out of reach of section 17(2) as well as out of reach of section 20 of the Act, 1976.In the facts of the present case, as stated herein above, there is no procedural lapse in decision making process, neither by Area Development Authority

nor by State Government.

(xi) The judgments cited by the learned advocate for the petitioners are not helpful to the petitioners looking to the facts of the present case. It is submitted by the learned counsel for the petitioners that if any new material is relied upon by the decision making authority, it ought to be supplied to the petitioners as per the judgment cited by the learned counsel for the petitioners. Looking to the facts of the present case, as stated herein above, there is no provision for exchange of objections and suggestions from one party to another party. There is no requirement for any personal hearing to the objectors looking to the scheme of the Act and therefore, the judgments cited by the learned counsel for the petitioners are not helpful to the petitioners.

10. As a cumulative effect of the aforesaid facts and reasons and the judicial pronouncements, in my opinion, the sanction given by the State Government to the revised draft development plan under section 17(1)(c) of the Act is true, correct, legal and in consonance with the provisions of the Act of 1976 and the Rules of 1979

and it does not warrant interference by this Court in exercise of the powers under Article 226 of the Constitution of India. As a result, the petitions fail and are hereby dismissed. Rule is discharged in each petition with no order as to costs. Interim relief, if any, stands vacated.

(D.N.PATEL,J)

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